



W.P.(MD).Nos.11244 & 11246 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.09.2023

PRONOUNCED ON : 08.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.11244 & 11246 of 2021

W.P(MD)No.11244 of 2021:

S.Manikandan

... Petitioner

Vs.

1.The Director,
Medical Education,
Kilpauk,
Chennai-600 010.

2.The Dean,
Government Theni Medical College Hospital,
Theni-625 512.

3.The Member Secretary,
Medical Services Recruitment Board (MRB),
DMS Building, 7th Floor, 359,
Anna Salai, Teynampet,
Chennai-600 006.

... Respondents

*(R3 is suo motu impleaded by this Court vide order, dated
23.08.2023 in W.P(MD)No.11244 & 11246 of 2021)*



W.P.(MD).Nos.11244 & 11246 of 2021

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the pertaining to the impugned order in Na.Ka.No.11619/Nib2/2021, dated 10.05.2021 passed by the respondent No.2 and quash the same as illegal and for consequential direction, directing the respondents to upward revision of pay scale entitled for Technical Assistant by the way of implementing the order, dated 30.05.2018 passed by the 2nd respondent in Mu.Mu.No.4307/NIB/2018 forthwith.

W.P(MD)No.11246 of 2021:

R.Prabhu Kumar

... Petitioner

Vs.

1.The Director,
Medical Education,
Kilpauk,
Chennai-600 010.

2.The Dean,
Government Theni Medical College Hospital,
Theni-625 512.

3.The Member Secretary,
Medical Services Recruitment Board (MRB),
DMS Building, 7th Floor, 359,
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For Petitioner : Mr.R.Venkatesan
(In both cases)

For R1 & R2 : Mr.N.Ramesh Arumugam
Government Advocate
(In both cases)

For R3 : Mr.V.Ramesh
Standing Counsel
(In both cases)

COMMON ORDER

The Government in G.O.Ms.No.176, Health and Family Welfare Department, dated 09.09.2002 issued orders for the establishment of a new Government Medical College at Theni with 300 bedded hospital with an intake of 100 students. Following which, the Director of Medical Education created medical, para medical and non-medical posts to the Theni Medical College satisfying the norms of the Medical Council of India. For which, Government



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Order in G.O.Ms.No.404, Health and Family Welfare, dated 03.12.2001 was issued. The names of the various posts created were given in Annexure – I of the said Government Order, of which a post of Technical Assistant for Central Sterilization Service Department (for short CSSD) (Sterilization Operator) in Serial No.57 was created with a scale of pay of Rs.4300-100-6000. The Department of Health and Family Welfare vide G.O.Ms.No.144, dated 30.04.2007 sanctioned the posts created vide G.O.Ms.No.176 of the Health and Family Welfare, dated 09.09.2002. The petitioners' names were sponsored by the District Employment Exchange, Theni for 2 posts of Technical Assistants for CSSD, Theni Medical College Hospital. Interview was conducted, both the petitioners were selected and are working there at since 2007. The prescribed minimum educational qualification for the said posts is a pass in SSLC, ITI (Electrician) Trade) (2 years) NTC and 5 years experience in the field of sterilization.

2. The Directorate of Medical Education vide G.O.Ms.No.511, Finance (PC) Department, dated 01.08.1992 had revised the scale of pay of certain trade posts on the basis of the recommendation of the official committee. Based on the recommendation of the One Man Committee (1986), orders were issued in



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G.O.Ms.No.762, Finance (PC) Department, dated 20.08.1986 classifying various trade posts such as Welder, Tinker, Electrician, Wireman etc., into broadly two groups granting the scale of pay of Rs.610-1075 for trade posts in Group-I requiring pass in SSLC with ITI certificate and the scale of pay of Rs. 555-970 for trade posts in Group II requiring the qualification in SSLC failed with I.T.I. certificate. The Fifth Tamilnadu Pay Commission has also endorsed the above recommendations of the One Man Committee and retained this difference granting two different scales of pay of Rs. 950-1500 and Rs.885-1200 for these posts.

3. Representations have been made by various associations of employees and certain heads of departments before the official committee constituted, requesting a common pay scale for all kinds of trade posts requiring I.T.I. certificate irrespective of the qualification of SSLC passed or SSLC failed. Certain associations have also filed cases in the Tamilnadu Administrative tribunal seeking pay revision for trade posts on Rs.825-100. The Tribunal while delivering judgement in these cases directed the Government to consider issuance of orders prescribing uniform pay scale for different trade posts requiring I.T.I. qualification in different trades without any distinction being



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made with reference to the basic academic qualification which possibly is not very relevant to their duties as tradesmen. The official committee has examined these requests taking into consideration the direction of the tribunal. The committee has recommended that Grade II trade posts requiring I.T.I. qualification may be allowed an uniform pay scale of Rs.950-1500 equating these posts with the posts of "Skilled" under Government of India and Rs. 1100-1660 for all Grade I posts. The committee has also recommended that the various other posts such as Helper, Fitter (Helper), Assistant to Fitter, Helper to Mechanic etc. granted with lower scales of pay of Ra. 800-1150 and below need not be disturbed.

4. On the basis of the said recommendations, the revised salary of various trade posts were revised by the Directorate of Medical Education with a post code listing and the post of Technical Assistant was given with a post code – 459 and a time scale of pay of Rs.5300-150-8300 was fixed vide G.O.Ms.No. 511, Finance (PC) Department, Directorate of Medical Education, dated 01.08.1992.



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5. On the basis of the said G.O.Ms.No.511, dated 01.08.1992, the petitioners claimed pay scale of Rs.5300-150-8300 by making a representation to the 1st respondent through the 2nd respondent on 27.01.2011. In this connection, the service book of the petitioners were also sent to the 1st respondent by the 2nd respon. In the meanwhile, consequent to the implementation of the recommendation of the 6th pay communication, the petitioners' scale was revised from Rs.4300-100-6000 to Rs.5200+2600 (G.P).

6. In the meanwhile, the Government started a new Government Medical College at Villupuram during the academic year 2007-08. The Health and Family Welfare Department vide G.O.Ms.No.72, dated 05.03.2010 created various posts medical, non-medical and para medical posts to the said college. Of which, the pay band for the post of Technical Assistant is fixed by G.O.Ms.No.72 as Rs.9300-34800 + 4200 (G.P).

7. On the basis of G.O.Ms.No.72, dated 05.03.2010 and on the principle of same pay for same post, the petitioners made several representations from the year 2011 to the 2nd respondent. The 2nd respondent forwarded the



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representations, dated 15.02.2011, 05.10.2016 and 21.03.2017 claiming a pay band of Rs.9300+4200 (G.P) to the 1st respondent. Thereafter, on 30.05.2018, the 2nd respondent passed the order in Mu.Mu.No.4338/NiBi/2018 for increasing the petitioners' scale of pay to Rs.9300+4200(G.P) from 13.12.2007. But till this date, the same was not implemented. Thereafter, the petitioners sent a representation to the 1st respondent through the 2nd respondent on 02.07.2019 seeking to revise their pay band from Rs.4300-100-6000 to Rs.9300+4200 (G.P) as on 13.12.2007 and to revise the pay consequently and it was forwarded on 02.07.2019 to the 1st respondent. However, the same was not considered. The writ petitioners filed a writ petition in W.P(MD)No.21149 of 2019 and this Court was pleased to pass order on 03.10.2019 directing the respondents to consider the representation of the petitioners, dated 02.07.2019 in accordance with law. Even after that, the same was not considered and hence, the petitioners had sent a detailed representation along with the order of this Court, dated 03.10.2019 on 07.12.2020 through the 2nd respondent to the 1st respondent. However, on 10.05.2021, the 2nd respondent vide his impugned order rejected the petitioner's representation. The reason for the rejection as put forth in the impugned order is that the post of the Technical Assistant created for Vilupuram Medical College vide G.O.Ms.No.72, dated 05.03.2010



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and the post of Technical Assistant for CSSD created for Theni Medical College vide G.O.Ms.No.404, dated 03.12.2004 are different and not one and the same. Even the minimum educational qualification prescribed for the said post in the 2 colleges are different and distinct from each other. Hence, it is not feasible for consideration of upgradation of the scale of pay prescribed for the Technical Assistant in Theni Medical College. Challenging the same, these writ petitions came to be filed.

8. Per contra, the 2nd respondent has filed a counter and the learned Government Advocate submitted that two posts were sanctioned in Central Sterilization unit at Government Theni Medical College Hospital, Theni. The minimum educational qualification for the post of Technical Assistant was Diploma passed etc., and the qualification for the post of Technician for CSSD was SSLC pass, ITI, Electrician trade (2 years) NPC and 5 years experience in the trade. The name of the post and the salary structure have been correctly mentioned in G.O.Ms.No.72, dated 05.03.2010 which is given to Government Medical College, Vilupuram. A critical perusal of annexure-I to G.O.Ms.No. 404, dated 03.12.2004 reveals that the various category of the non-medical post created for Theni Medical College and the post of Technical Assistant for CSSD (sterilization operator) was created with a scale of pay of



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Rs.4300-100-6000 in Serial No.57. Interestingly, Serial No.58 is post of Technician for Animal Operation Room (Animal Technical) with a scale of pay of Rs.4000-1000-6000. Serial No.59 is the post of Technician in Audio Visual Aids Photography and Artist (Photographer Grade-2) with a scale of pay of Rs.4000-100-6000. Technical Assistant for CSSD is a trade post or which the prescribed minimum educational qualification is ITI Electrician trade, NTC. ITI certificate holders are trained in various trades like Welder, Tinker, Electrician, Wireman etc., by the Industrial Training Institute. Already the office committee of Finance Department by its order, dated 01.08.1992 has recommended to prescribe uniform pay scale for different trade without any distinction being made with reference to the basic academic qualification which is not very relevant to trade posts as tradesman. The Medical Council of India under the minimum standard requirements for Medical College (for 100 admissions annually) Regulation 1999 prescribes 8 posts of Technical Assistants and 8 posts of Technicians respectively for CSSD in Medical Colleges. That apart, the information under the Right to Information Act, dated 05.01.2016 as submitted by the petitioner reveals that 8 posts of Technical Assistants have been sanctioned to each and every 7 Medical Colleges including Vilupuram and Theni, of which only in Theni Medical College, 2



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posts of Technical Assistant posts have been filled up and all the remaining posts are still vacant. Yet another information received under RTI Act, dated 06.01.2016 reveals that the basic pay matrix for the post of Technical Assistant in Vilupuram Medical College is Rs.9300-34800+4200(G.P).

9. It is interesting to observe that the 2nd respondent having passed the order vide his proceedings in Mu.Mu.No.4338/Ni.Bi/2018, dated 30.05.2018 to rectify the pay anomaly in the pay band of the petitioners based on the petitioners' representations, later made a somersault by passing the impugned order of rejection of the petitioners' representations seeking rectification in pay anomaly. That apart, he has pleaded in his counter that his proceeding was subsequently cancelled on 25.06.2018 on the basis of the objection of the internal audit committee. It is submitted in the counter that the internal audit committee of the Directorate of Medical Education, Chennai conducted internal audit on 03/2018. It is further explained that the committee gave direction to get proper opinion on the said G.O.Ms.No.404, dated 03.12.2004 and G.O.Ms.No.144, dated 30.04.2007 from the Government to take further necessary action. The internal audit report for the period 2017-18 has been



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placed before me by the learned Government Advocate. Paragraph No.28 of the same has made the following observation:

(1) In Theni Government Medical College, 8 posts of Technical Assistant have been created and sanctioned under regular time scale of pay of Rs. 4300-100-6000 vide G.O.Ms.No.144, Health and Family Welfare Department. Two employees with ITI qualification, namely S.Manikandan and R.Prabu Kumar (petitioners herein) have been appointed in the said posts. Their scale of pay has been revised to the pay band of Rs.5200-20200+2600(G.P) with effect from 03.12.2007.

(2) While so, the 2nd respondent vide his proceedings, dated 30.05.2018, mentioning that the Technical Assistant post at Vilupuram Medical College has been created and a pay band at Rs.9300-34800 + 4200(G.P) vide G.O.Ms.No. 72, dated 05.03.2010 has been sanctioned, has passed the orders of pay parity to the 2 Technical Assistants serving at Theni Government Medical College at par with the Technical Assistant post in Vilupuram Government Medical College.

(3) Though the post of Technical Assistant has been created and a scale of pay of Rs.4300-100-6000 was sanctioned and further revised to pay band of



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Rs.5200-20200+2600 (G.P) at Theni Government Medical College, in Vilupuram Government Medical College, which was commenced later, similar post of Technical Assistant has been created in Serial No.76 and the same has been sanctioned with pay band of Rs.9300-34800+4200(G.P).

(4) G.O.Ms.No.338 Finance (Pay Cell) Department, dated 26.08.2010 has categorised the various trade posts with revision of their scale of pay and change of nomenclature of the posts and has mandated the employees qualified in ITI (trade) to be nomenclated as Skilled Assistant Grade-I with pay band Rs.5200-20200+2800(G.P) and those employees qualified in Diploma to be nomenclated as Technical Supervisor including para medical with pay band of Rs.9300-34800+4200(G.P).

10. The above clarity emanated from the directions of Department of Finance (Pay Cell) , vide G.O.Ms.No.338, dated 26.08.2010 and further directed the 2nd respondent to get amended orders from the Government in this regard.

11. However, the Government considered the revision of scales of pay of trade posts in an earlier occassion vide G.O.Ms.No.511/Finance(PC) Department, dated 01.08.1992. In the said Government Order, the Government



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noticed that for certain trade posts in Government Departments and in local bodies, different qualifications have been prescribed, namely Diploma in Engineering or ITI certificate of practical experience with a view to streamline all trade posts and bring them on the same level in respect of qualification for any trade post. The Government accordingly directed that the qualification for an entry level trade post or Grade II post would be ITI certificate for direct recruitment and wherever there is provision for recruitment by promotion from lower post, a reasonable period of experience say 8 to 10 years be prescribed for promotees.

12. A perusal of G.O.Ms.No.338 Finance (Pay Cell) Department, dated 26.08.2010 reveals that the Government has revised the scales of pay of trade posts and has redesignated the trade post in technical categories vide the said G.O as follows:

SL.No.	Name of the Posts	Existing scale of Pay + Grade Pay	Revised Scale of Pay + Grade Pay
		Rs.	Rs.
(1)	(2)	(3)	(4)



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1.	Supervisory posts in the pre-revised scale of pay of Rs. 4500--7000 re-designated as Supervisor	5200—20200 + 2800	9300—34800 + 4200
2.	Special Grade Trade Posts in the pre-revised scale of pay of Rs.4300—6000 re-designated as Special Artisan	5200—20200 + 2600	5200—20200 + 2800
3.	Grade—I (promotion posts) in the pre-revised scale of pay of Rs.4000--6000 re-designated as Skilled Assistant Grade—I	5200—20200 + 2400	5200—20200 + 2600
4.	Grade –II (entry level posts) in the pre-revised scale of pay of Rs.3050—4590 re-designated as Skilled Assistant Grade—II	5200—20200 + 1900	5200—20200 + 2000
5.	Other Trade Posts in the pre-revised scales of pay of Rs.2750—4400 Rs. 2650—4000 Rs. 2610—3540 Rs. 2550—3200 re-designated as Unskilled	5200—20200 + 1800 4800—10000 + 1650 4800—10000 + 1400 4800—10000 + 1300	5200—20200 + 1900



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13. The Government also considered the request of the technical employees appointed with ITI certificate / practical experience in the respective trades and recommended to rationalize the trade posts with revision in their scales of pay and change of nomenclature of the posts as follows:

“i) To merge the Unskilled and Semi-skilled employees now existing in trade posts in the scales of pay from Rs.2550—3200 to Rs.2750—4400 (prerevised) and to place such posts on a higher scale of pay of Rs.3050—4590 (pre-revised) with corresponding revised scale of pay duly re-designating these posts as Unskilled.

ii) Consequent on the above upgraded scale of pay of Rs.3050—4590 (pre-revised) recommended to Unskilled and Semi-skilled employees, the entry level Grade—II trade posts may be placed one level above the existing scale of pay from Rs.3050—4590 to Rs.3200—4900 (pre-revised) with corresponding revised scale of pay duly re-designating the Grade—II trade posts as Skilled Assistant Grade—II.

iii) Considering one level jump recommended to Grade-II trade posts and also taking into account the “plus two” qualification prescribed for certain trade courses, the Grade—I trade posts may be placed one level above the existing scale of pay from Rs.4000—6000 to Rs.4300—6000 (prerevised) with corresponding revised scale of pay duly re-designating the Grade—I trade posts as Skilled Assistant Grade--I.

iv) Consequent on the upgraded scale of pay recommended to Grade-I trade posts, the promotion posts to Grade—I trade posts may be placed one level higher than the existing scale of pay. Accordingly, the scale of pay of the promotion posts to Grade—I trade posts viz. Artisan Special / Assistant Foreman etc. may be revised from Rs.4300—6000 to Rs.4500—7000 with



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corresponding revised scale of pay duly recommending to re-designate these posts as Special Artisan.

v) The Supervisory technical posts presently in the scale of pay of Rs. 4500—7000 (pre-revised) such as Foreman (Mechanical), Maistry, Chargeman (Mechanical / Electrical), Assistant Store Keeper, Tailoring / Weaving Instructor, Boot Maistry, Soap Chemist, Phenyle Assistant and certain posts in Stationery & Printing Department, the requisite qualification for direct recruits is “Diploma“. As all para-medical posts with diploma qualification in the scale of pay of Rs.4500—7000 have been upgraded at Rs. 5000—8000 (pre-revised), the Supervisory Technical posts may also be revised from Rs.4500—7000 to Rs.5000—8000 (prerevised) with corresponding revised scale of pay duly re-designating these supervisory posts as Supervisor.”

14. Thus the Government directed that the scales of pay of the technical categories (trade posts) in all Government Departments and local bodies has to be uniformly revised and redesignated as above. Precisely G.O.Ms.No.338, dated 26.08.2010 brought all the technical posts into 4 groups and designated them as Junior Technical Officer, Assistant Technical Officer, Technical Officer and Supervisory Technical Officer. In view of the same, the posts tabulated in Row 1 of the above tabular column are Supervisory Technical Officers, Row 2 are Technical Officer (Special Grade), Row 3 are Assistant Technical Officers (promotion posts), Row 4 are Junior Technical Officers (entry level posts) and Row 5 are other trade posts redesignated as unskilled



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respectively. Only on the basis of the above recommendation, the Internal Audit Committee consisting of 3 office Supervisors, 2 Assistants and one Junior Assistant who have audited the Theni Government Medical College during the period of 2010-11 to 2017-18, in the internal audit report for the period 2017-18, in Paragraph NO.28 the said committee has observed that the Technical Assistant Post in Theni Medical College is Grade-I trade post and Technical Assistant post in Vilupuram Medical College is a Supervisory Technical Officer post, on the basis of the difference in grade pay to those posts. Only on that basis, the 2nd respondent has cancelled his proceedings sanctioning removal of pay anomaly of the petitioners vide proceedings, dated 30.05.2018 vide his cancellation order, dated 25.06.2018.

15. Conclusively, the root of the case which has to be decided is as to, “whether the observation in Paragraph No.28 of the Internal Audit Committee report for the period 2017-18 of the Theni Medical College made on the basis of G.O.Ms.No.338 of Finance (Pay Cell) Department, dated 26.08.2010 is legally correct”?

16. Though G.O.Ms.No.338 has categorized all the trade posts into 4 categories in all the Government Departments and local bodies uniformly, the categorization of the various trade posts in the Government Medical Colleges



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cannot be categorised on the touch stone of G.O.Ms.No.338, dated 26.08.2010 for the following reasons:

(i) Various temporary posts were sanctioned on consolidated and on out source basis to the Government Medical College at Thoothukudi, Tirunelveli, Kanniyakumari, Theni, Vellore and Government General Hospital, Chennai vide G.O.Ms.No.144, dated 30.04.2007.

(ii) Various temporary posts were sanctioned on consolidated and on out source basis to the Government Medical College, Villupuram vide G.O.Ms.No. 72, dated 05.03.2010.

(iii) The Medical Council of India prescribes the minimum standard requirements for Medical Colleges under the Minimum Standard requirements for Medical College (for 100 admissions annually) Regulation, 1999.

(iv) The Medical Council of India has prescribed the following posts for the Central Sterilization Service Department : Matron-1, Staff Nurse-4, Technical Assistant-8, Technician-8, Ward Boys-8, Sweeper-4.

(v) The various information provided by the Public Information Officer of Theni and Vilupuram Medical Colleges respectively under RTI reveals that the pay band for the post of Technical Assistant in Theni Medical College is



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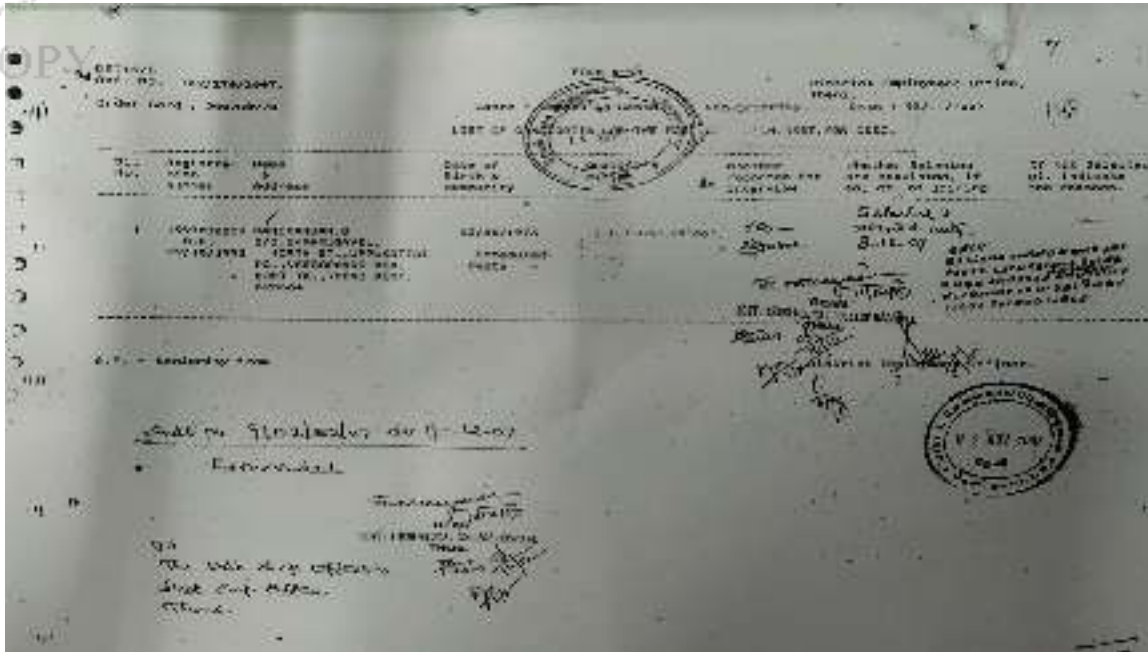
Rs.5200-20200+2600(G.P) and the pay band for the post of Technical Assistant in Vilupuram Medical College is Rs.9300-34800+4200(G.P) respectively. However, in neither of the colleges, the Adhoc Service Rules for the post of Technical Assistant is available.

(vi) The minimum educational qualification prescribed by the notification inviting applications through the employment exchange for recruitment to the post of Technical Assistant in CSSD is a pass in SSLC, Electrician (trade), ITI with experience for a period of 5 years in operation and maintenance of sterilisors.

(vii) Both the petitioners were sponsored by employment exchange Theni and were duly selected after interview by the selection committee and the appointment order is extracted as follows:



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(viii) There cannot be different criteria for appointment and conditions of service for the same post in the different medical colleges functioning under the Department of Health and Family Welfare, Government of Tamil Nadu as regulated under the minimum standard requirements for Medical College Regulations, 1999 of Medical Council of India.

(ix) All the posts in the colleges commenced vide G.O.Ms.No.144, 404 and 72 of the Health and Family Welfare were created prior to the implementation of G.O.Ms.No.338, dated 26.08.2010.

(x) Technical Assistant is a trade post and 8 Technical Assistant posts are earmarked for every CSSD in Medical Colleges as per Medical Council of India norms. Following MCI norms, 8 posts of Technical Assistant for CSSD



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have been sanctioned in both Theni and Vilupuram Medical Colleges respectively. There shall not be any pay discrimination between the two and pay should be fixed uniformly with parity to each other.

(xi) As far as the various trade posts are concerned, the Regional Joint Director of Training, Guindy, Madras vide clarification letter, dated 22.06.1995 clarified that in respect of trades of Electrician/Wireman, they are identical trades, but winding work is separate in Wireman trade. Whereas Electrician is a SSLC passed trade and Wireman is SSLC appeared trade.

(xii) The Public Information Officer of the Department of Employment and Training, Guindy in an information received under the RTI Act, dated 19.12.2017 has provided that the minimum education qualification for the post of Junior Training Assistant in Government ITI's and the pay band is as follows:

“(i) அரசினர் தொழிற்பயிற்சி நிலையத்தில் பணிபுரியும் இளநிலை பயிற்சி அலுவலர் பதவிக்கு தேவையான கல்வித் தகுதி

Degree/3 years Diploma in Engineering/Technology (or) NTC with 3 years experience (or) NAC with 2 years experience.

(ii) இளநிலை பயிற்சி அலுவலர் பதவிக்கான ஊதிய விகிதம்



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Rs.9300-34800+4200 Grade Pay (Pre-revised Scale)”

(xiii). The petitioners possess SSLC + Electrician Trade (National Trade Certificate) in ITI with 5 years experience in Sterilization.

(xiv) In view of the similar post of Technical Assistant, CSSD has been created and sanctioned to all the Medical Colleges including Theni and Vilupuram Medical Colleges and the grade pay sanctioned to the post of Junior Training Assistant and Government ITI with minimum education qualification of pass in SSLC + ITI (NTC) with 3 years/5 years experience respectively, I am of the view that the Government has not clarified whether the posts prescribing minimum educational qualification of Diploma should be headed in parity with posts prescribing SSLC + ITI (NTC) trade + 3 to 5 years experience in sterilization.

(xv) It is needless to say G.O.Ms.No.338, dated 26.08.2010 cannot have retrospective effect.

17. The Hon'ble Supreme Court in a case of *Assistant Excise Commissioner, Kottayam & Others Vs. Estahappan Cherian & Others* reported in **2021 (10)SCC 210** in Paragraph Nos.14 and 15 has held as follows:



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*“14. There is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. In **Commissioner of Income Tax v. Vatika Township MANU/SC/0810/2014 : (2015) 1 SCC 1** this court, speaking through a Constitution Bench, observed as follows:*

*“31. Of the various rules guiding how a legislation has to be interpreted, one established Rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow’s backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in **Phillips vs. Eyre**, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*

*32. The obvious basis of the principle against retrospectivity is the principle of ‘fairness’, which must be the basis of every legal Rule as was observed in the decision reported in **L’Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd.** Thus, legislations which modified accrued rights or which impose obligations*



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or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.”

15. Another equally important principle applies: in the absence of express statutory authorization, delegated legislation in the form of Rules or Regulations, cannot operate retrospectively. In Union of India v M.C. Ponnose 1970 SCR (1) 678 this Rule was spelt out in the following terms:

“The Courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any Rule or Regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a Rule or Regulation with retrospective effect. But where no such language is to be found it has been held by the Courts that the person or authority exercising subordinate legislative functions cannot make a Rule, Regulation or bye-law which can operate with retrospective effect.”



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18. In yet another case, the Hon'ble Apex Court reported in 1994 5SCC 450 (Union of India & Others Vs. Tushar Ranjan Mohanty & Others) has held as follows:

“14. The legislatures and the competent authority under [Article 309](#) of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the Court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.”

19. I am fully in consonance with the aforesaid judgments discussed supra, the power of the respondents cannot be used to justify the arbitrary and discriminative act of rejecting the petitioners' claim for removal of pay anomaly and grant of pay parity in the post of Technical Assistant serving in Theni Medical College at par with the pay band of the post of Technical Assistant in Vilupuram Medical College. The right of the petitioners to seek for pay parity in the post of Technical Assistant created and sanctioned in Theni Government Medical College and Vilupuram Medical College respectively is vested in them under the Constitution and hence, he has rightfully challenged the same before



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this Court. The Government cannot defeat the said right as nugatory by issuing subsequent G.O.Ms.NO.338 Finance (Pay Cell) Department, dated 26.08.2010. That apart, the anomaly in fixation of pay scale in the post of Technical Assistant for CSSD in Theni Medical College and the post of Technical Assistant for CSSD in Vilupuram Medical College are so glaring and writ large on the face, when the petitioners who are in possession of ITI Electrician trade (NTC) with 5 years experience in the field of sterilization are being equated with the post of Technicians requiring ITI Electrician trade (NTC) without field experience of 5 years. Though the post of Technical Assistant and Technician are trade posts, the area of operation and the nature of work to be exercised are extremely different and distinct from each other. Obviously, there has been a pay anomaly and though the representations were made by the petitioners, they have been unfortunately rejected by the competent authority. The equals have to be treated as equals and should be placed on the same pedestal in the matter of grant of pay scale. In this case, the 2nd respondent claims difference between the same Technical Assistant posts in 2 different Medical Colleges. Such treatment of the post by the Government in the circumstances of the case has to be discountenanced outright by this Court. By such comparison of 2 equal posts to be treated unequally by the Government and grant of low pay scale to



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these petitioners by equating them with Technicians is *per se* preposterous, arbitrary, irrational and unreasonable and cannot be countenanced both in law and on facts. It is a clear case of violation of principles of equality enshrined in Article 14 of the Constitution of India. Article 14 of the Constitution of India is not only to secure ends of justice between equals, but also to prevent miscarriage of justice in treating two equal posts differently.

20. In view of the above discussions, I don't hesitate to hold that G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010 cannot have any effect on the sanctioned post of Technical Assistant for CSSD in the various Medical Colleges in the State of Tamil Nadu and the respective grade pay of the various medical colleges recommended vide G.O.Ms.No.144,404 and 72 of the Health and Family Welfare Department respectively. Hence, I hereby quash the impugned order of the 2nd respondent, dated 10.05.2021 and consequently, direct the respondents to upgrade the revision of pay entitled to the petitioners in the post of Technical Assistants by way of implementing the order, dated 30.05.2018 passed by the 2nd respondent in Mu.Mu.No. 4307/NIB/2018 within a period of twelve (12) weeks from the date of receipt of a copy of this order.



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21. Accordingly, these Writ Petitions stand allowed. No costs.

08.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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To

- 1.The Director,
Medical Education,
Kilpauk,
Chennai-600 010.
- 2.The Dean,
Government Theni Medical College Hospital,
Theni-625 512.
- 3.The Member Secretary,
Medical Services Recruitment Board (MRB),
DMS Building, 7th Floor, 359,
Anna Salai, Teynampet,
Chennai-600 006.



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L.VICTORIA GOWRI, J.

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